

IPR POLICY ISSUES AFFECTING PLANT VARIETIES*

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DEFINITION OF PLANT VARIETY

In the original text of the International Union for the Protection of New Varieties of Plants (UPOV) Convention 1961, a plant variety was defined as "any cultivar, clone, line, stock or hybrid which is capable of cultivation and which satisfies the provisions for novelty, distinctness, uniformity and stability."

In the light of the developments in biotechnology, a "modern" definition was coined in the 1991 Act of the UPOV Convention, as follows:

"Variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged."

CONCEPT OF PLANT VARIETY PROTECTION OR PLANT BREEDER'S RIGHT

Plant variety protection, which is also called plant breeder's right, is an exclusive right granted to the breeder of a new plant variety to enable him/her to exploit it to its full potential. It is a right under which the breeder alone may, for a limited period of time, produce or sell the propagated material of his/her variety or authorize such production or sale by others. It is a form of intellectual property right, and is in a similar category with patents, copyrights, trademarks, and industrial designs.

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REASONS FOR THE LEGAL PROTECTION OF PLANT VARIETIES

Proponents or advocates of plant breeder's right cite the following reasons for instituting legal protection of plant varieties:

- (a) Plant breeding or the development of new plant varieties requires a substantial investment in terms of skill, labor, material resources and time (five to 15 years for many plant species). The breeder deserves remuneration or profit for his labors and investment.
- (b) The granting of the exclusive right to exploit a new variety encourages the plant breeder to invest more in plant breeding, thus leading to more and better plant varieties.

SCOPE OF VARIETY PROTECTION OR EXCLUSIVE BREEDERS' RIGHTS

Countries with plant variety protection laws may differ in the extent to which legal protection is given to the breeder. The member states of UPOV, however, agreed under the 1978 Act of the Convention on the scope of protection. The right extends only to the propagating material and not to the harvested product. It does not extend to the production of propagating material that is not for commercial marketing. A farmer who uses part of his harvest of a protected variety as planting material for subsequent sowing on his farm does not violate the breeder's right. However, if he sells such planting material then the breeder has a basis for filing a suit for such action.

A comparison by Greengrass (1991) of patent protection and plant variety protection is shown in Table 1.

ARGUMENTS AGAINST THE INSTITUTION OF A PLANT VARIETY PROTECTION SYSTEM

While many plant breeders and plant breeding organizations (particularly those that are privately-owned) would welcome the introduction of a system of plant variety protection, there are also those (and these include plant breeders also) who argue against it. One of the major concerns is that plant breeder's right may hamper the free flow or exchange of plant germplasms. In other words, the availability of plant genetic resources may become restricted or limited and, therefore, result in limited genetic variability available to some breeders.

Greengrass (1991), however, pointed out that the UPOV Convention expressly provides that a protected variety may be freely used by others to breed further varieties, i.e., it remains freely available as a plant ge-

Table 1
COMPARISON OF FEATURES OF PATENT PROTECTION
AND PLANT VARIETY PROTECTION
(GREENGRASS, 1991)

	Patent protection	Plant variety protection
I. Object of Protection	(industrial) invention	plant variety
II. Requirement for Protection		
1. documentary examination	required	required
2. field examination	not required	required
3. plant material for testing	not required	required
4. conditions for protection	a) novelty	a) commercial novelty
	b) industrial applicability	b) distinctiveness
	c) unobviousness (inventive step)	c) uniformity
	d) an enabling disclosure	d) stability
		e) an appropriate denomination
III. Scope of Protection		
1. determination of scope of protection	determined by the claims of the patent	fixed by the national legislation (or by the UPOV Convention in the case of UPOV member states)

Table 1 (continued)

	Patent protection	Plant variety protection
2. use of a protected variety for breeding further varieties	may require authorization of the patentee	does not require authorization of the right holder (research exemption)
3. use of propagating material of the protected variety for subsequent planting	may require the authority of the patentee	does not require authorization of the right holder
IV. Variety Denomination	not required	required
V. Term of Protection	fixed	fixed

netic resource. He also noted that the experience of UPOV member states has shown that plant variety protection increases the number of breeders and widens the spectrum of varieties available to farmers.

Another reason for the reluctance to adopt a system of plant variety protection is the anticipated technical and administrative constraint in implementing the law that provides for such a system. The system would require an agency/organization that would accept, process and approve applications filed for plant variety protection. The organization should be equipped with facilities that will enable it to determine with certainty the distinctness, homogeneity, stability and novelty of the variety for which a protection is being applied. It should have the means for ascertaining the identity of any variety.

The preceding sections provide only an overview of the concept of plant variety protection or plant breeder's right and some of the arguments for and against the institution of the system. There are certainly many other relevant aspects that have not been covered. Nonetheless, it is hoped that they provide some basis for discussion and for tackling the question: Should a plant variety protection system be adopted in the Philippines? To answer this question, a thorough discussion of the relevant issues is necessary. In the past, there had been opportunities to discuss the subject. It is, of course, obvious that not much has come out of them. Renewed interest and perhaps some recent developments make it worth revisiting.

REFERENCES

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